

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 v. : Criminal No.: 3:15-cr-00077 (SRU)
 :
 BARCLAYS PLC, : December 1, 2016
 :
 Defendant. :

**UNITED STATES' SENTENCING MEMORANDUM AND MOTION FOR
DEPARTURE**

The United States respectfully submits this memorandum in aid of sentencing and in support of the Plea Agreement entered into between the United States and Barclays PLC (the "Defendant"), a global financial services company. On May 20, 2015, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the Defendant waived indictment and pleaded guilty to a one-count information charging it with violating Section 1 of the Sherman Act, 15 U.S.C. § 1. Sentencing in this matter is scheduled for December 15, 2016.

The United States and the Defendant agree that a criminal fine in the amount of \$650 million, a period of probation of 3 years, no order of restitution, and a \$400 special assessment, is a sentence sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. §§ 3553(a), 3572(a). The Probation Office has also stated in its evaluation that the proposed sentence meets these purposes. *See* Presentence Report (November 16, 2016) ¶ 98. The Defendant has cooperated extensively with the investigation giving rise to this matter. For the reasons set forth below, the United States respectfully moves for a downward departure from

VI. Motion for Substantial Assistance Departure

The Defendant provided timely, useful and substantial assistance to the United States' investigation into conduct in the FX Spot Market. In consideration of the factors under 18 U.S.C. §§ 3553(a) and 3572 as discussed above, and for the reasons set forth below, pursuant to U.S.S.G. § 8C4.1, the United States moves for a downward departure to reduce the Defendant's guidelines fine to \$650 million.

1. The Significance and Usefulness of the Assistance

The United States' wide-ranging investigation into conduct in the FX Spot Market involved the review of enormous volumes of electronic and telephonically recorded conversations collected over a number of years, the interviews of hundreds of witnesses, and the analysis of complex trade data detailing substantial FX transactions, and involving entities throughout the world. For over a year and half leading to the proposed resolution, the Defendant provided information to assist the investigations conducted by both the Antitrust Division and the Criminal Division. This cooperation continues to this day.

In its investigations into antitrust conspiracies, the United States relies heavily on the cooperation of insiders, because such conspiracies are inherently secretive. This is especially true in this case, in which much of the evidence of the conduct was contained in an exclusive chat room which could only be viewed by the chat participants themselves. As an added complexity, the communications in this chat room were often filled with dense jargon, describing highly technical trading strategies, and conveyed frequently in shorthand. The Defendant provided valuable assistance by explaining how the FX Spot Market operates, and by defining and decoding certain jargon traders use when describing their actions in the market, sometimes via a line-by-line review of chat transcripts. This allowed the United States to more effectively

question witnesses during its investigation, and helped guide the analysis of the evidence obtained. Moreover, while the EUR/USD currency pair is the focus of the charges in this matter, when the investigation began the United States examined conduct in multiple currencies, involving a number of different chat rooms. The Defendant's assistance helped narrow the scope and focus of the investigation.

The Defendant produced large amounts of trade data to the United States. This data was of critical importance to the United States, because it was used, in part, to quantify the harm caused by the conduct in determining the appropriate fine. But the relevant trade data was itself also important evidence of the conduct since, in many instances, the data corroborated statements made by the traders in the Cartel Chat. The Defendant's cooperation was uniquely helpful in this respect. Over the course of a number of lengthy meetings with the United States, the Defendant presented its analysis of its own trade data for specific days of interest to the United States. These presentations required hundreds of hours of work by the Defendant, resulting in a detailed integration of data, chat transcripts from multiple chat rooms, and audio files memorializing telephone calls of interest. This information allowed the United States to better assess the import of specific conduct in the market.

The Defendant also provided significant and useful assistance by bringing certain evidence to the attention of the United States concerning a potential antitrust conspiracy in the FX Spot Market, separate from the conspiracy charged in the Information, and involving different currencies. This cooperation involves obtaining information from witnesses; producing and explaining relevant documents, audio files, and trade data; and conducting numerous factual presentations on the conduct at issue. The United States has an ongoing investigation into this conduct, which the Defendant has significantly advanced through its cooperation.